

National Association of County Veterans Service Officers



**Service-
Connected
Disability
Compensation**

Confidential Information

Confidential information, whether supplied by the veteran, the Department of Veterans Affairs, or other parties, shall remain confidential and can only be released to the veteran.

Topics of Coverage

- Definitions associated with veteran's benefits
- What is service-connection?
- Who is eligible for service-connection?
- What are the eligibility requirements?
- What is compensation?

Topics of Coverage

- Types of service-connection
 - Direct service-connection
 - Aggravated service-connection
 - Presumptive service-connection
 - Secondary service-connection
 - 38 USC 1151
 - “Not” service-connection but paid at the same rate

Topics of Coverage

- Application for service-connection
- Opening claims for increase
- Reopening previously denied claims
- Service-connected death
- Extra-schedular service-connection
 - Individual Unemployability (TDIU)
 - Special Monthly Compensation

Definitions Associated with Veterans Benefits

- Active Duty: Full time duty with the Armed Forces, other than for training.
 - Full time as an enlisted member, warrant officer, commissioned officer, service cadet or midshipman in the military academies, attendance at the prep schools for the academy, and authorized travel periods.

Definitions Associated with Veterans Benefits

- Active Duty for Training:
 - Full time duty in the Armed Forces performed by a member of any Reserve Component or National Guard for training purposes
 - Attendance in a preparatory school of a member entering directly from the National Guard with a binding requirement of service upon disenrollment
 - Authorized travel time

Definitions Associated with Veterans Benefits

- Inactive Duty for Training:
 - Other than full time duty for training purposes, not to include study or educational training sessions for Reserves and Reserve Officers to include National Guard
 - Authorized travel to and from Inactive Duty Training

Definitions Associated with Veterans Benefits

- In the Line of Duty: A condition that resulted in an injury or disease that was not due to the veteran's own willful misconduct.
- Willful Misconduct: An act involving conscious wrongdoing or known prohibitive action.

Definitions Associated with Veterans Benefits

- Willful Misconduct: (cont)
 - It involves deliberate or intentional wrongdoing with knowledge of or wanton disregard of its probable consequences.
 - Mere technical violation of police regulations or ordinances will not per se constitute willful misconduct.
 - Willful misconduct will not be determinative unless it is the proximate cause of the injury, disease, or death.

Definitions Associated with Veterans Benefits

- Presumption of Soundness:
 - Every person entering active military service is presumed to be in sound physical and mental condition unless specifically noted otherwise. This must be medical documentation to show the level of disability that is in existence prior to the person being accepted. Mere notation in a file that a person has a condition without medical documentation is not sufficient to rebut the Presumption of Soundness.

What is Service-Connection?

- Service-Connection: any injury or disease that is cause by or aggravated by active military service, or treatment of service-connected disabilities.

Who is eligible for Service-Connection?

Veterans with Active Duty and Active Duty for Training are eligible for service-connection for injuries or diseases incurred in the line of duty.

Veterans on Inactive Duty for Training only may qualify for injuries sustained while actively training.

What are the eligibility requirements?

- To determine eligibility for service-connected disability, the veteran's service must have been terminated by discharge or separation under conditions other than dishonorable.
- There is no time-of-service requirement for filing for service-connection, the only requirement is that of character of service.

What are the eligibility requirements?

- The VA is required to review any upgraded discharge that was based upon periods of absence without leave (AWOL) of 180 days or more, even if the re-characterization was by the Discharge Review Board

What is Compensation?

Compensation is a monetary award paid for injuries or diseases that were incurred in, or aggravated by active military service.

Compensation may also be paid for conditions that are secondary to service-connected disabilities, or that result from the treatment of service-connected disabilities.

Service-Connection

- **Direct**: the injury/disease was incurred in/began during a qualifying period of service and was not due to misconduct
 - In order for a condition to be considered under ‘Direct’, the veteran must show there is a current condition and an incident or treatment in-service for that condition or symptoms related to that condition.

Service-Connection

- **Aggravation**: the injury/disease existed prior to military service but is now worse because of participation in service.
 - In order to be considered for ‘aggravation’, the veteran must provide medical evidence that the condition has progressed beyond its normal course due to participation in active military service.

Service-Connection

- **Presumptive**: diseases that are known to be caused by specific exposures while on active military service, or injuries and diseases that manifest to the 10% level within a specific time frame as identified in the 38 CFR.

Service-Connection

- **Secondary**: a disease or injury that is directly attributed to a condition for which the veteran is service-connected.
 - In order for a condition to be listed as ‘secondary’, there must be medical evidence linking the secondary condition to the primary service-connected condition in a cause and effect nature.

Service-Connection

- **38 USC 1151**: the veteran has been injured by a VA medical facility. This injury can result from services provided for service-connected disabilities or it may result from some other treatment procedure. Disabilities considered under 1151 are compensated as if they were service-connected in nature.

Application for Service-Connection

Typical Forms Used

- 21-526 Application for Compensation or Pension, or
- 21-526EZ Fully Developed Claim (Comp), and
- 21-22 Appointment of Veterans Service Organization
- 21-4138 Statement in Support of Claim
- 21-4142 Request for Release of Information
(if necessary to acquire private treatment records)

(Many advocates recommend that you obtain private medical records yourself and submit them with the claim)

Application for Service-Connection Supporting Documents

- Certified copies of all DD214s (Discharge document)
 - Required by the VA
- Dependency Information if applicable
 - Marriage Certificates and Birth Certificates
 - Death Certificates and Divorce Decrees from prior marriages, if applicable

Application for Service-Connection

- Veterans who have received any of the following awards; Disability Severance, Special Separation Bonus, or Voluntary Separation Incentives, will have their disability compensation offset until the amount paid to the veteran upon separation is recouped.

For disability severance, the offset is based on the initial percentage of the award given to the veteran for the condition under which he/she was released.

Claims for Increase

At any time, a veteran can file a claim for an increased rating for a currently rated disability

Filing Claims for Increase

- To file a claim for increase of a currently service-connected condition, the veteran need only submit a statement in writing informing the VA of the condition that has worsened.
- Supporting medical evidence is recommended.

Filing Claims for Increase

A veteran's claim for an increase in service-connection does not protect the veteran from a reduction in that benefit claimed if the preponderance of the evidence presented reflects a permanent stable improvement in the claimed condition. In order for the veteran to have his/her claim protected they must meet one of the levels afforded under 38 Code of Federal Regulations.

Protected Ratings

- **5-Year Rule**

38 CFR 3.344 states that the regulatory requirements for reducing a disability rate that has continued for the same level for 5 years or more are more stringent than the general requirements for periodically increasing or decreasing a disability rating. In short the VA can not reduce the rating without providing an examination equal to or more thorough than the examination upon which payments were authorized.

Protected Ratings

- **10 Year Rule**

38 CFR 3.957 states that any condition for service connection held for 10 years may not be severed unless it is shown that the rating was based on fraud or it is clearly shown that the veteran did not have the requisite service or character of discharge.

Opening Claims for Increase

- **20-Year Rule**

- 38 CFR 3.951 states that any rating held for 20 years may not be reduced or severed except where it is shown that such rating is based on fraud.
- Note that protection in ratings only applies to the condition prior to the request and approval of an increase.

The increase is considered a new rating and the 20 years starts over.

Filing Claims for Additional Conditions

- To file a claim for an additional condition as service-connected, the veteran must submit a request in writing to open the claim for addition of a specific condition and either a diagnosis of the condition or the location of medical evidence that would support the claim.
- Use 21-526b

Reopening A Previously Denied Claim

- The veteran must provide evidence that is both new and material in nature
- That evidence must be of such a nature as when evaluated with the whole record it would result in a different outcome.
 - New evidence is that which is not merely cumulative of the evidence of record.
 - Material evidence is that which is probative of the issues which were the basis for the disallowance.

Reopening a Previously Denied Claim

- Many times veterans will attempt to reopen a denied claim with the same information that was in evidence previously. The only time that this would be prudent is in the case of inpatient services received at a military hospital; while the STR may denote the fact that the veteran received services, it may not show the diagnosis and prognosis made by the attending physician.

Extra-schedular Service-connection

- **Individual Unemployability**

- is a benefit paid at the 100% compensation rate for veterans who have a service-connected disability that precludes them from seeking or maintaining gainful employment.

The disability that the veteran is rated for under this condition may be determined “permanent and total”, or, the VA may require periodic examinations to determine unemployability.

Extra-schedular Service-Connection

- IU (cont)

- To be eligible, the veteran must meet the requirements of 38 CFR 4.16.

To file under 4.16(a) the veteran must be 60% on one issue or combined at 70% with one condition at 40%.

To file under 4.16(b) the veteran must have a condition that is prohibiting gainful employment, this paragraph requests an extra-schedular rating be applied outside of the standard schedular ratings.

Extra-schedular Service-connection

- What constitutes “gainful employment”?
 - In *Faust v. West* (2000) the Court held that a substantially gainful occupation is one that provides annual income that exceeds the poverty threshold for one person, irrespective of the number of hours or days that the veteran actually works; such employment constitutes, as a matter of law, a substantially gainful occupation and thus "actual employability" for the purposes of 38 CFR § 3.343(c)(1).

Combined Ratings

- Two or more 0% disabilities, without any other compensation, may be paid at the 10% rate.
- The 0% conditions combined must show an impairment to employment
- Bilateral Factor

Extra-schedular Service-Connection

A temporary 100% rating for:

- 4.29 – hospitalization for a service-connected condition for a period in excess of 21 days
- 4.30 – surgery, convalescence or immobilization following surgery or treatment for a service-connected condition

Special Monthly Compensation

- What is SMC?
 - SMC is an additional amount paid to veterans with a service-connected disability for loss of use or loss of anatomical parts, sensory or reproductive organs.
- What qualifies for SMC?
 - Any loss of use or loss of an anatomical part, sensory, or reproductive organ that is direct result of a service-connected disability.

Special Monthly Compensation

- How is it paid?
 - SMC is paid based on Statutory and Intermediate Codes. The codes are based on the type of disability that qualifies under SMC. Each level of disability carries additional monetary allowances that are added to the basic rates of disability to determine the final allowances.

38 CFR Section 3.665

- Incarcerated Veterans – Compensation
- On the 61st day of incarceration following the conviction of a felony, compensation will be reduced –
 - 20% to 100% - reduced to 10%
 - 10% - reduced to ½ the 10% rate

38 CFR Section 3.665

- Do not forget the dependents – ask for an apportionment of benefits if appropriate
- Fugitive felons – can not be paid compensation or pension benefits

Reference Material

- Title 38 United States Code (38 USC)
 - <http://www.law.cornell.edu/uscode/38/>
- 38 Code of Federal Regulations (38 CFR)
 - <http://ecfr.gov>
- U.S. Court of Appeals of Veterans Claims
 - <http://www.vetapp.uscourts.gov>